



# Water Right Application and Ownership Update Processing Factsheet

Fall 2021

## Introduction

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The Department of Natural Resources and Conservation's (DNRC) Water Resources Division (WRD) is responsible for water right administration statewide. The purpose of this factsheet is to provide data on the number of water right filings received and pending across the State to establish a baseline understanding that will inform the development of improvements to application processing times.

Over the last decade, the Department has seen a steady increase in the quantity and complexity of applications received while program staffing has not seen a commensurate increase. During that time the Department reformed its Permit and Change process to increase efficiencies and continues to do so as an iterative process to examine and implement areas for improvement. The Department must meet statutory timelines when processing Beneficial Use Permits and Water Right Change Applications.

Workloads continue to increase and, there are areas that require the Department's attention and continuous improvement. One of these areas is the accumulation of permits, changes, and exceptions that are outside statutory timelines, or have not been acted on with the priority they deserve (known as the "backlog"). One purpose of the Department's Comprehensive Water Review is to examine these areas both internally and with stakeholder involvement to determine where further efficiencies can be gained, to identify what processes can be improved, and to create tools to allow for timely and accurate processing of water right applications across the board moving forward, thereby improving service to the State of Montana.

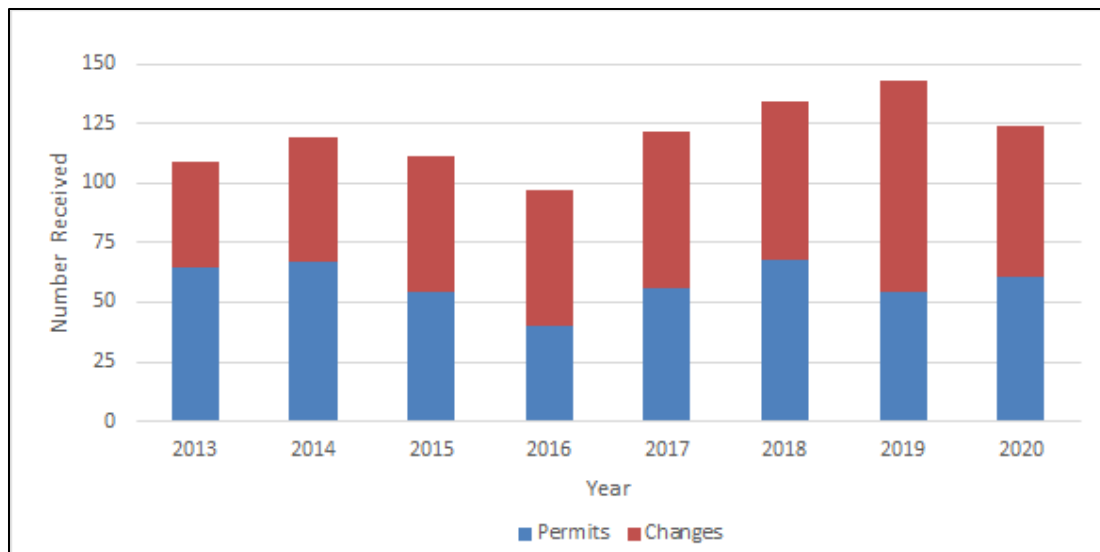
## Permit and Change Applications

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Application information below includes applications received on or after October 12, 2012, which is the date the Department last reformed the permit and change process.

### Permits and Changes Received Statewide

Generally, over the last decade, filings for permit and change applications have increased, especially in the high growth regions across the state. **Figure 1** shows the number of permits and change applications received annually from 2013 through 2020 (2012 and 2021 are not included as they do not contain data for a full year).

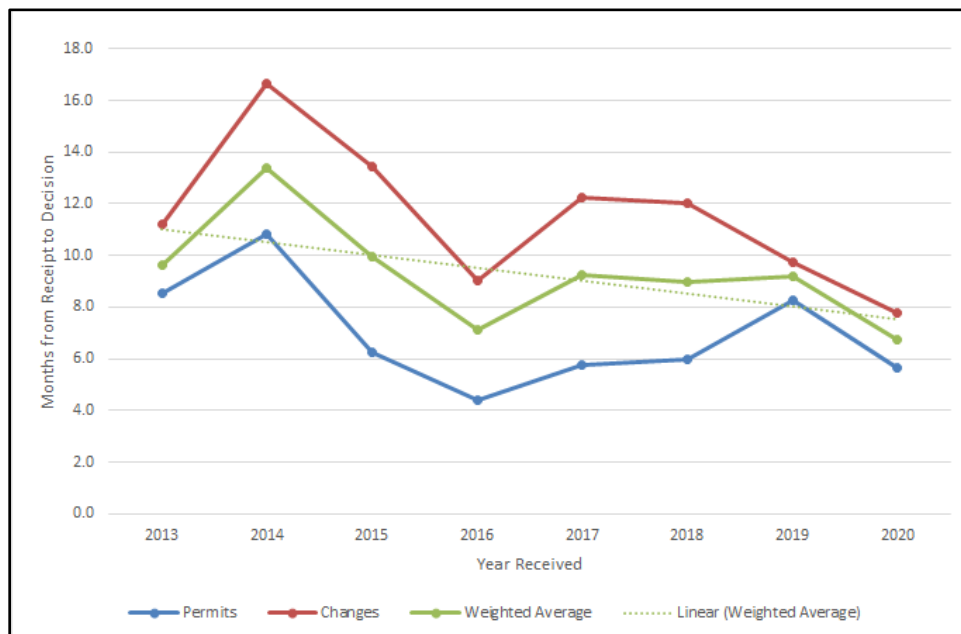


**Figure 1: Permit and Change Applications Received**

## Permit and Change Processing Times Statewide

### Average Processing Time

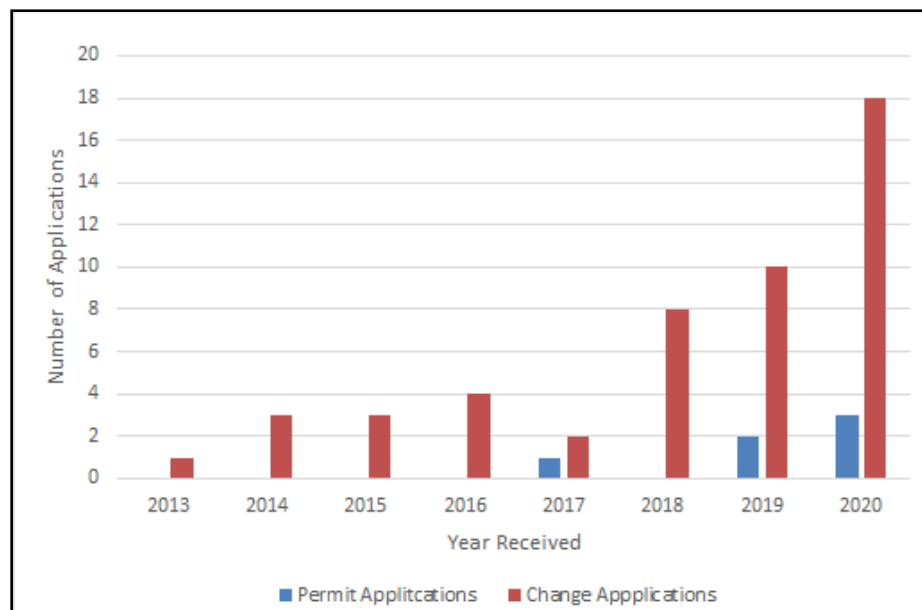
**Figure 2** shows the average processing time from the date an application is received to the date a decision document is completed. While annual processing times vary, on average, processing times have been reduced significantly since 2013, as illustrated by the linear trendline. The average statewide processing time is 9.3 months.



**Figure 2: Permit and Change Application Processing Times**

## Application Backlog

While the average processing times noted above indicate that decision documents are currently completed, on average, within 9.3 months of receipt, some applications take much longer to process (those older applications that are still pending are known as the “backlog”). **Figure 3** shows applications that are at least one year old and have not had a decision document completed (e.g., Preliminary Determination to Grant, Grant with Modifications, or Deny). Applications are listed by the year in which they were received, and the number of applications involved. For example, in 2020, DNRC still had 3 permit applications and 18 change applications that are still in process.



**Figure 3: Pending Permit and Change Applications Greater than One Year Old**

## Status of Pending Applications

**Figure 4** offers a visual representation of pending permit and change applications and their status.

- **Green** (126 applications) represents all those applications that are meeting all statutory deadlines.
- **Yellow** (44 applications) represents circumstances when an applicant signed a timeline waiver more than 90 days ago and no decision document has been completed or when the application has been in a timeline free zone for over 90 days.
  - When an applicant signs a timeline **waiver**, the applicant needs to provide additional information and/or DNRC needs additional time to work through it.
  - The second situation is for those applications where a **deficiency response** was received by DNRC but the application has not been deemed correct and complete.
  - The Department intends to reduce the use of waivers and the associated time an individual permit may spend in the timeline-free zone through process improvement, workload analysis, and resource sharing.
- **Red** (0 applications) represents those where DNRC is currently missing a statutory timeline.

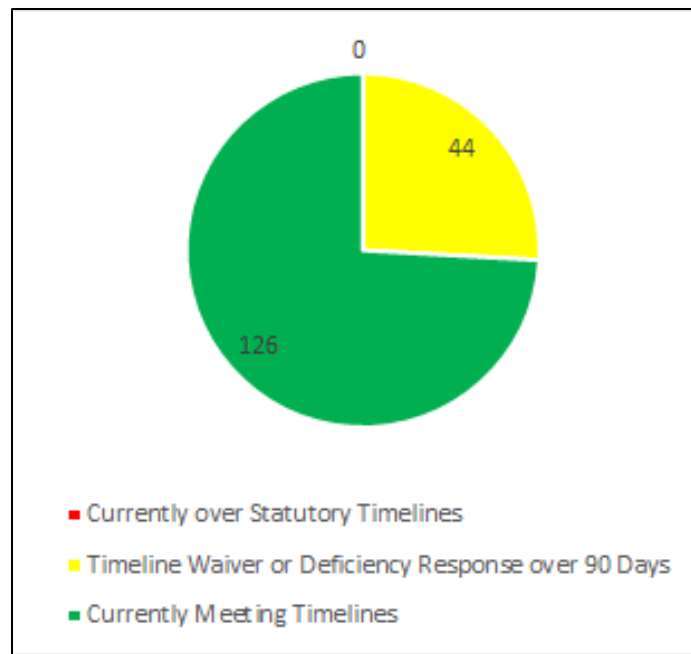


Figure 4: Status of Pending Permit and Change Applications

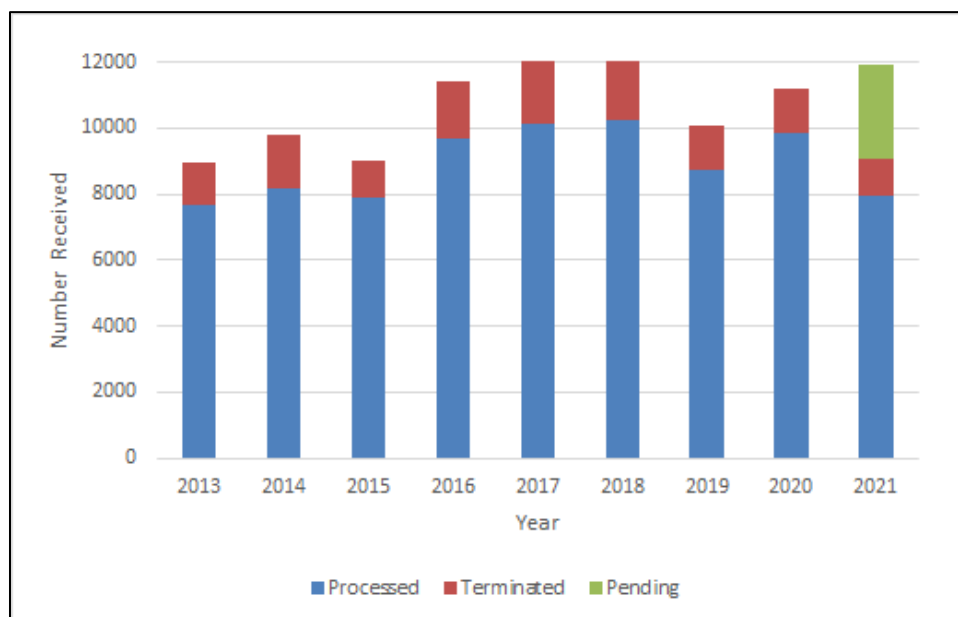
## Ownership Updates

Water Right ownership information is tracked in DNRC's central Water Rights Information System database. Ownership of a water right generally matches the ownership of the underlying property. To maintain accurate ownership information, DNRC relies on two systems: Ownership Update Forms (608s) and an ownership data exchange with the Montana Department of Revenue (DOR).

1. New water right owners are required to submit an Ownership Update Form and pay the required fee to update the official ownership record with DNRC. In many cases, title companies will file the necessary paperwork when a property changes hands. This is not a requirement however, rather a voluntary service the title company may provide to its customers. When DNRC receives an Ownership Update Form, staff thoroughly review the form and recorded chain of title documents. If recorded chain of title is included, an ownership update is processed. Recorded chain of title from the DNRC record owner to the new owner is required. If the required documents are not received, a deficiency letter is sent to the new owner. Without proper documentation, the ownership update is not processed.
2. DNRC also uses property ownership information sent by DOR to initiate ownership updates as appropriate. DOR sends a list with a single unique identifying number to each parcel of land in the state called a geocode. If the seller noted from DOR matches the seller in DNRC's records, an ownership update is initiated. If the seller from DOR does not match the DNRC record owner, a deficiency letter is sent requesting the full recorded chain of conveyance from the owner of record to the seller and finally to the new owner, without this documentation, the ownership update cannot be processed.

## Ownership Updates Received

**Figure 5** shows how many ownership updates have been received annually since 2013. On average, DNRC receives around a thousand ownership updates per month. Each of these updates require some level of review and many require more extensive research.



**Figure 5: Ownership Updates Received**

## Processing Timelines

Prior to October 1, 2021, DNRC did not track timelines for processing ownership updates. However, the Department strives to initially enter paper forms within 3-business days of receipt. In compliance with SB55 (2021), beginning October 1, 2021, DNRC has implemented a more robust system for tracking the processing times of ownership updates. All necessary dates (including received, sale, deficiency letter sent, processed, terminated, paid) will now be entered into the database and can be tracked at any time.

Heading into 2021, there was a backlog of information received from DOR that was waiting to be reviewed. The total backlog of “lines” (which simply represents ownership information but does not translate directly to the number of ownership updates), exceeded 25,000 in January 2021. DNRC devoted extra resources to address this backlog and, as of October 2021, the backlog is nearly resolved (only about 100 lines remain representing especially complicated ownership updates). **Figure 6** shows the progress made on processing this backlog.

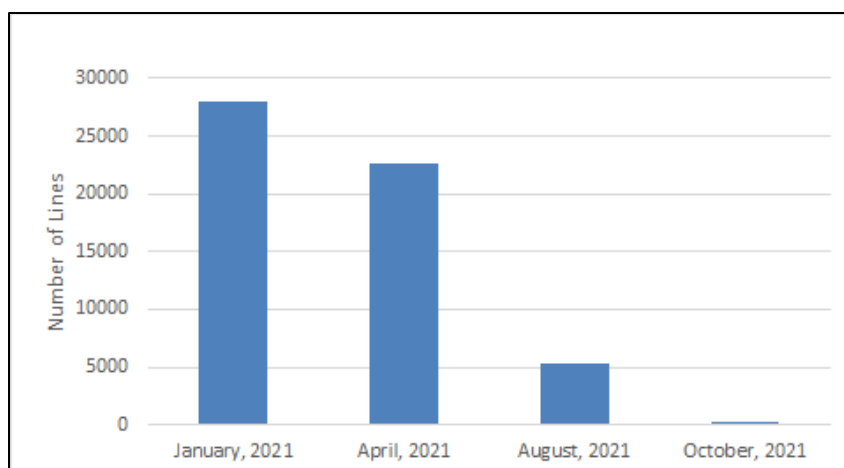


Figure 6: Outstanding DOR Lines

## SB55 Implementation

The 2021 Montana Legislature passed SB55 a bill to “Revise the Process for Water Right Ownership Updates”. A few highlights of the bill include:

- A full recorded chain of conveyance is now required for most ownership updates
- Instituting timelines for the processing of ownership updates:
  - 30 days for DNRC to send deficiency letters or process the update
  - 60 days for owners to respond to deficiency letters
- DNRC cannot delay processing of updates due to lack of payment

## Implementation

- DNRC signed a new Memorandum of Understanding with DOR. Beginning in October, DOR will send property seller information to DNRC. Moving forward, DNRC can immediately initiate an ownership update only if the DOR sellers match the DNRC owner of record. If not, the new owners must provide the full chain of conveyance from the DNRC owner of record.
- Implementation of several changes to the water rights database which will facilitate tracking of updates, deficiencies, timelines, fees, etc.
- Communicated via written letters, phone calls, and in-person visits with title companies and realtors regarding the changes required by SB55.

## Challenges

- During early tests of the newly included information from DOR required for SB55 implementation, only 31% of the updates showed a direct match to the DNRC owner of record and DOR property seller. Therefore, 69% of updates will require deficiency letters and a full recorded chain of conveyance before they can be processed. If a full recorded chain of conveyance is not received, the water right ownership will not be updated.
- DNRC has reached out to title companies and other real estate professionals to outline the coming changes. Initial feedback is that many title companies will no longer provide the ownership update service to customers. As of mid-October, actual response has been mixed.
- Since DNRC cannot delay processing ownership updates due to lack of payment, there is a concern that fee collection will decline. DNRC will be sending fee letters after the update is done and, at this point, has limited ability to collect fees that are not paid voluntarily.